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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: FRESNO, CA Date: MAR 01 2004

IN RE: Applicant [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on September 29, 1965, in Mexicali, Mexico. The record reflects that the applicant's mother, [REDACTED], was born in the Mexico on January 9, 1949, and that she is a United States (U.S.) citizen. The applicant was born out of wedlock, and his birth certificate contains no information regarding his natural father. The record reflects that the applicant's mother married [REDACTED] (Mr. [REDACTED]) in California on August 6, 1972. The record contains a delayed issued U.S. birth certificate, issued on March 5, 1987, indicating that Mr. [REDACTED] was born in Arizona on November 18, 1929, and that he is a U.S. citizen. The record reflects further that according to information contained on the applicant's birth certificate, the applicant was adopted by Mr. [REDACTED] on September 27, 1978. The record indicates that the applicant entered the U.S. illegally in 1981, and that he obtained legal permanent resident status pursuant to section 210(A) of the Act, 8 U.S.C. § 1160, on December 1, 1990. The record indicates further that the applicant was placed into exclusion proceedings in 1994, and that proceedings were terminated on December 12, 1994, pursuant to an immigration judge finding that the applicant's parents were U.S. citizens, and that the applicant had a valid claim to U.S. citizenship. The Immigration and Naturalization Service (Service) did not appeal the December 1994, decision. The applicant presently seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, based on the claim that he acquired U.S. citizenship at birth through his mother. In the alternative, the applicant seeks a certificate of citizenship through his mother and adoptive father, pursuant to section 301(c) of the Act, 8 U.S.C. § 1401(c).

The district director concluded the applicant had failed to establish that his mother was physically present in the United States or its outlying possessions for a continuous period of 1 year prior to the applicant's birth, as required by section 309(c) of the Act. The application was denied accordingly. The district director's decision did not analyze the applicant's eligibility for U.S. citizenship pursuant to section 301(c) of the Act.

On appeal, the applicant asserts that his mother resided in the U.S. prior to his birth, as is evidenced by her 1965, receipt of a Social Security card and her 1965 Social Security earnings statement. The applicant asserts further that he is not required to establish that his mother resided in the U.S. for a fixed period of time prior to his birth. The applicant additionally asserts that his adoptive father is a native-born U.S. citizen and that documentation pertaining to Mr. [REDACTED] residence in the U.S. would be forthcoming. The AAO notes that it did not receive any documentation pertaining to Mr. [REDACTED] residence or physical presence in the United States. No other information or evidence was submitted on appeal.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted).

Section 309(c) of the Act, 8 U.S.C. § 1409, states:

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, **and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.**

The AAO finds that the applicant's assertion that he is not required to establish that his mother resided in the U.S. for a fixed period of time prior to his birth, is clearly contrary to the statutory language contained in section 309(c) of the Act. The AAO finds further that the evidence in the record fails to establish that the applicant's mother (Ms. [REDACTED]) was physically present in the U.S. or one of its outlying possessions for a continuous period of one year prior to the applicant's birth on September 29, 1965. The Social Security Earnings statement submitted on appeal reflects that Ms. [REDACTED] earned \$224.70 during the year 1965. The statement does not reflect any earnings by Ms. [REDACTED] prior to 1965. Moreover, the statement does not indicate where Ms. [REDACTED] lived during 1965, or during which months she earned money in the United States. The AAO notes further that the applicant's birth certificate states that Ms. [REDACTED] resided in Mexicali, Mexico, at the time of the applicant's birth in September of 1965, and the school and medical documentation submitted on appeal indicates that no records of Ms. [REDACTED] presence in the U.S. were found.

Based on the above lack of evidence, the AAO finds that the applicant has failed to establish that his mother was physically present in the United States or one of its outlying possessions for a continuous period of one year prior to his birth on September 29, 1965. The applicant has therefore failed to establish that he meets the requirements for U.S. citizenship pursuant to section 309(c) of the Act.

The AAO finds that the applicant has also failed to establish eligibility for U.S. citizenship pursuant to section 301(c) of the Act.

Section 301(c) of the Act states that the following shall be nationals and citizens of the United States at birth:

- (c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person.

Section 101(c)(1) of the Act states, in pertinent part, that:

- (1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and . . . a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The record contains a delayed issued birth certificate indicating that Mr. [REDACTED] may be a native born U.S. citizen. In addition, the record contains evidence that 1994, immigration court exclusion proceedings against the applicant were terminated pursuant to an unappealed, immigration judge finding that the applicant had derived U.S. citizenship through his U.S. citizen mother and father. The AAO notes, however, that although the present record contains a copy of the 1994, termination order, no evidence or other information pertaining to Mr. [REDACTED] U.S. citizenship is contained within the record. Moreover, the record contains no evidence or information regarding Mr. [REDACTED] physical presence in the United States.

The AAO additionally notes that, although the applicant's birth certificate contains an annotation indicating that Mr. [REDACTED] adopted the applicant on September 27, 1978, when the applicant was 12 years old, the record does not contain an adoption decree, or any other evidence to indicate that the applicant was legally adopted, or that he was in the legal custody of Mr. [REDACTED] at the time of his adoption.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in this case has failed to establish that his mother meets

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the physical presence requirements set forth in section 309(c) of the Act. He has additionally failed to establish that he meets the definition of "child" as set forth in section 101(c) of the Act, or that Mr. [REDACTED] is a U.S. citizen who resided in the United States for the requisite period of time set forth in section 301(c) of the Act. Accordingly, the applicant has not met his burden of establishing that he is a U.S. citizen. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.